

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

|                                 |          |                                       |
|---------------------------------|----------|---------------------------------------|
| <b>UNITED STATES OF AMERICA</b> | <b>§</b> |                                       |
|                                 | <b>§</b> |                                       |
| <b>v.</b>                       | <b>§</b> | <b>CRIMINAL NO.: H-4-21-cr-103-S4</b> |
|                                 | <b>§</b> |                                       |
| <b>MOHAMED M. MOKBEL,</b>       | <b>§</b> | <b>JUDGE LEE H. ROSENTHAL</b>         |
|                                 | <b>§</b> |                                       |
| <b>Defendant.</b>               | <b>§</b> |                                       |

**THE PARTIES' JOINT REQUESTED PRELIMINARY JURY INSTRUCTIONS<sup>1</sup>**

The United States of America, by and through Alamdar S. Hamdani, United States Attorney, and Assistant United States Attorneys Kathryn Leigh Olson and Adam Laurence Goldman, and Mohamed M. Mokbel, by and through Charles Flood and John Cline, respectfully request that the Court include the following preliminary instructions in its charge to the jury. Unless otherwise indicated, these instructions are from the 2024 edition of the Pattern Jury Instructions prepared by the Committee on Pattern Jury Instructions, District Judges Association, Fifth Circuit.

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<sup>1</sup> This document has been divided into two sections. The first section are those instructions agreed to by the parties. The second section has instructions proposed by the United States to which Defendant objects. Included in the second section are Defendant's proposed red-lined edits.

Date: September 25, 2024

Respectfully submitted,

ALAMDAR S. HAMDANI  
United States Attorney, Southern District of Texas

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of September, 2024, I electronically filed this document with the Clerk of Court using CM/ECF, to which opposing counsels are members:

s/ Adam Laurence Goldman  
Adam Laurence Goldman  
Assistant United States Attorney

## **SECTION I – INSTRUCTIONS AGREED TO BY THE PARTIES**

### **1.01 -- Preliminary Instructions**

Members of the Jury:

Now that you have been sworn, I will give you some preliminary instructions to guide you in your participation in the trial.

#### ***Duty of the jury:***

It will be your duty to find from the evidence what the facts are. You and you alone will be the judges of the facts. You will then have to apply to those facts the law as the court will give it to you. You must follow that law whether you agree with it or not. Perform these duties fairly. Do not let any bias, sympathy, or prejudice that you may feel toward one side or the other influence your decision in any way. In particular, do not let racial, ethnic, national origin, or other bias influence your decision in any way.

Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as indicating, what your verdict should be.

#### ***Evidence:***

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other items received into the record as exhibits, and any facts that the lawyers agree to or stipulate to or that the court may instruct you to find.

Certain things are not evidence and must not be considered by you. I will list them for you now.

1. Statements, arguments, and questions by lawyers are not evidence.
2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make objections when they believe evidence being offered is improper under the rules of evidence.

You should not be influenced by the objection or by the court's ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen, heard, or read outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness's testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

***Rules for criminal cases:***

As you know, this is a criminal case. There are three basic rules about a criminal case that you must keep in mind.

First: the defendant is presumed innocent until proven guilty. The Fourth Superseding Indictment brought by the Government against the defendant is only an accusation, nothing more. It is not proof of guilt or anything else. The defendant therefore starts out with a clean slate.

Second: the burden of proof is on the Government until the very end of the case. A defendant has no burden to prove his innocence, or to present any evidence, or to testify. Since a defendant has the right to remain silent, the law prohibits you from arriving at your verdict by considering that the defendant may not have testified.

Third: the Government must prove the defendant's guilt beyond a reasonable doubt. I will give you further instructions on this point later but bear in mind that in this respect a criminal case is different from a civil case.

***Summary of applicable law:***

In this case, defendant Mohamed Mokbel is charged with one count of conspiracy to commit mail fraud and health care fraud, five counts of health care fraud, one count of conspiracy to defraud the United States and to buy, sell, and distribute Medicare Beneficiary Identification Numbers and to pay health care kickbacks, five counts of engaging in monetary transactions in property derived from specified unlawful activity, one count of conspiracy to commit bribery concerning programs receiving federal funds, and one count of bribery concerning programs receiving federal funds. I will give you detailed instructions on the law at the end of the case, and those instructions will control your deliberations and decision. But in order to help you follow the evidence, I will now give you a brief summary of the elements of the offense that the Government must prove beyond a reasonable doubt to make its case.

*Note: The parties disagree as to the remainder of this instruction. Their differing versions are provided in the second section of this filing.*

***Conduct of the jury:***

Now, a few words about your conduct as jurors.

During the course of the trial, do not speak with any witness, or with the defendant, or with any of the lawyers in the case. Please do not talk with them about any subject at all. You may be unaware of the identity of everyone connected with the case. Therefore, in order to avoid even the appearance of impropriety, do not engage in any conversation with anyone in or about the courtroom or courthouse. It is best that you remain in the jury room during breaks in the trial and do not linger in the hall. In addition, during the course of the trial, do not talk about the trial with anyone else—not your family, not your friends, not the people with whom you work. Also, do not discuss this case among yourselves until I have instructed you on the law and you have gone to the jury room to make your decision at the end of the trial. Otherwise, without realizing it, you may start forming opinions before the trial is over. It is important that you wait until all the evidence is received and you have heard my instructions on rules of law before you deliberate among yourselves.

You, as jurors, must decide this case based solely on the evidence presented here within the four walls of this courtroom. This means that during the trial you must not conduct any independent research about this case, the matters in this case, and the individuals or corporations involved in the case. In other words, you should not consult dictionaries or reference materials, search the Internet, websites, or blogs, or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom.

I know that many of you use cell phones, the Internet, and other tools of technology. You also must not talk to anyone at any time about this case or use these tools to communicate electronically with anyone about the case. This includes your family and friends. You may not communicate with anyone about the case through any means, including your cell phone, through

e-mail, BlackBerry, iPhone, text messaging, or on Snapchat or Twitter, or through any blog or website, including Facebook, Google+, WhatsApp, Instagram, LinkedIn, or YouTube. You may not use any similar technology of social media, even if I have not specifically mentioned it here. I expect you will inform me as soon as you become aware of another juror's violation of these instructions. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result, which would require the entire trial process to start over.

*Course of the trial:*

I will now give you a roadmap to help you follow what will happen over the entire course of this trial. First, the Government will make an opening statement, which is simply an outline to help you understand the evidence as it is admitted. Next, the defendant's attorneys may, but do not have to, make an opening statement. Opening statements are neither evidence nor arguments. The Government will then present its witnesses, and counsel for the defendant may cross-examine them. Following the Government's case, the defendant may, if he wishes, present witnesses whom the Government may cross-examine. If the defendant decides to present evidence, the Government may introduce rebuttal evidence.

After all the evidence is in, the attorneys will present their closing arguments to summarize and interpret the evidence for you, and the court will instruct you on the law. After that, you will retire to deliberate on your verdict.

The trial will now begin.

**SECTION II – INSTRUCTIONS PROPOSED BY THE UNITED STATES TO WHICH  
THE DEFENDANT OBJECTS<sup>2</sup>**

**1.01 – Preliminary Instructions [summary of applicable law subsection]**

For the conspiracy to commit mail fraud and health care fraud charge, the elements of the offense are:

*First:* That the defendant and at least one other person agreed to commit the crime of mail fraud or health care fraud, as charged in the Fourth Superseding Indictment and described below;

*Second:* That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

For the health care fraud charges, the elements are:

*First:* That the defendant executed or attempted to execute a scheme to defraud a health care benefit program; or that the defendant executed or attempted to execute a scheme to obtain, by means of materially false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, Medicare, Medicaid, private insurance, or a pharmacy benefits manager;

*Second:* That the defendant acted knowingly and willfully in executing or attempting to execute the scheme; and

*Third:* That the scheme was in connection with the delivery of, or payment for, health care benefits, items or services.

For the conspiracy to defraud the United States and to buy, sell, and distribute Medicare Beneficiary Identification Numbers and pay health care kickbacks charge, the elements are:

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<sup>2</sup> The United States' proposed instruction appears first, followed by the defendant's proposed redline.

*First:* That the defendant and at least one other person agreed (a) to defraud the United States of (b) to commit the crime of (i) purchasing, selling, distributing, or arranging for the purchase, sale, distribution of Medicare Beneficiary Identification Numbers or (ii) offering and paying kickbacks and bribes in cash and in kind to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any items and service for which payment may be made in whole or in part under Medicare.

*Second:* That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

*Third:* That at least one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the Fourth Superseding Indictment, in order to accomplish some object or purpose of the conspiracy.

For the engaging in monetary transactions in property derived from specified unlawful activity charges, the elements are:

*First:* That the offense of Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity was committed by some person;

*Second:* That the defendant associated with the criminal venture;

*Third:* That the defendant purposefully participated in the criminal venture; and

*Fourth:* That the defendant sought by action to make that venture successful.

For the conspiracy to commit bribery concerning programs receiving federal funds charge, the elements are:

*First:* That the defendant and at least one other person agreed to commit the crime of bribery concerning programs receiving federal funds, as charged in the Fourth Superseding Indictment;

*Second:* That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

*Third:* That at least one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the Fourth Superseding Indictment, in order to accomplish some object or purpose of the conspiracy.

For the bribery concerning programs receiving federal funds charge, the elements are:

*First:* That an individual identified in the Fourth Superseding Indictment as E.Y. was an agent of Optum RX,

*Second:* That Optum RX was an organization that received in any one-year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance;

*Third:* That the defendant corruptly gave money to E.Y. with the intent to influence or reward E.Y. in connection with a transaction or a series of transactions of Optum RX; and

*Fourth:* That the transaction or series of transactions involved anything of value of \$5,000 or more.

**Defendant's redline of "summary of applicable law":**

For the conspiracy to commit mail fraud and health care fraud charge, the elements of the offense are:

*First:* That the defendant and at least one other person agreed to commit the crime of mail fraud or health care fraud, as charged in the Fourth Superseding Indictment and described below; and

*Second:* That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose.

For the health care fraud charges, the elements are:

*First:* That the defendant executed or attempted to execute a scheme to defraud a health care benefit program;

*Second:* ~~That the scheme to defraud employed false defendant executed or attempted to execute a scheme to obtain, by means of materially false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, Medicare, Medicaid, private insurance, or a pharmacy benefits manager;~~

*ThirdSecond:* That the defendant acted with a specific intent to defraud a health care benefit program~~knowingly and willfully in executing or attempting to execute the scheme; and~~

*FourthThird:* That the false pretenses, representations, or promises were material; and

*Fifth:* ~~That the operation of the health care benefit program affected interstate commerce~~the scheme was in connection with the delivery of, or payment for, health care benefits, items or services.

For the conspiracy to defraud the United States and to buy, sell, and distribute Medicare Beneficiary Identification Numbers and pay health care kickbacks charge, the elements are:

*First:* That the defendant and at least one other person agreed (a) to defraud the United States or (b) to commit the crime of (i) purchasing, selling, distributing, or arranging for the purchase, sale, distribution of Medicare Beneficiary Identification Numbers or (ii) offering and paying kickbacks and bribes in cash and in kind to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any items and service for which payment may be made in whole or in part under Medicare.

*Second:* That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

*Third:* That at least one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the Fourth Superseding Indictment, in order to accomplish some object or purpose of the conspiracy.

For the engaging in monetary transactions in property derived from specified unlawful activity charges, the elements are\*:

*First:* That the defendant knowingly engaged in a monetary transaction offense of Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity was committed by some person;

*Second:* That the monetary transaction was of a value greater than \$10,000 defendant associated with the criminal venture;

*Third:* That the monetary transaction involved criminally derived property defendant purposefully participated in the criminal venture; and

*Fourth:* That the criminally derived property was derived from specified unlawful activity defendant sought by action to make that venture successful.

Fifth: That the defendant knew that the monetary transaction involved criminally derived property; and

Sixth: That the monetary transaction took place within the United States.

For the conspiracy to commit bribery concerning programs receiving federal funds charge, the elements are:

*First:* That the defendant and at least one other person agreed to commit the crime of bribery concerning programs receiving federal funds, as charged in the Fourth Superseding Indictment;

*Second:* That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

*Third:* That at least one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the Fourth Superseding Indictment, in order to accomplish some object or purpose of the conspiracy.

For the bribery concerning programs receiving federal funds charge, the elements are:

*First:* That an individual identified in the Fourth Superseding Indictment as E.Y. was an agent of Optum RX;

*Second:* That Optum RX was an organization that received in any one-year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance;

*Third:* That the defendant corruptly gave money to E.Y. with the intent to influence or reward E.Y. in connection with a transaction or a series of transactions of Optum RX;

*Fourth: That the payment was made before the transaction or series of transaction or that the defendant agreed to pay E.Y. before the transaction or series of transactions; and*

| *Fifth*: That the transaction or series of transactions involved anything of value of  
\$5,000 or more.